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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

RAY MELINE, Plaintiff and Respondent, v. DADSON WASHER SERVICE, INC., Defendant and Appellant.	B210292 (Los Angeles County Super. Ct. No. BC340980)

APPEAL from a judgment of the Superior Court of Los Angeles County. Soussan G. Bruguera, Judge. Affirmed.

Steven P. Krakowsky for Defendant and Appellant.

Ralph W. Boshes for Plaintiff and Respondent.

INTRODUCTION

This is the second appeal involving the same parties, the same property and the same leasehold disputes. The first appeal was decided by this court in an unpublished opinion filed July 16, 2007 (B192339). The matter was before this court following the granting of a motion for summary judgment and entry of judgment thereon in favor of Ray Meline against Dadson Washer Service, Inc. In B192339, this court found triable issues of material fact and reversed the judgment of the trial court for further proceedings consistent with the views expressed in the opinion. For clarity and convenience our opinion in B192339 will be referred to hereafter as "Meline 1." On remand a three day bench trial was conducted resulting in a judgment in favor of Ray Meline against Dadson Washer Service, Inc. This appeal followed. The current appeal (B210292) will be referred to as "Meline 2" unless context requires otherwise. Because the issues in Meline 1 and Meline 2 involve the same parties, property and leasehold disputes we utilize the same name, property and leasehold references for convenience and continuity of reasoning.

The core issue in the current appeal centers on whether Meline was a bona fide purchaser ("BFP") for value in 1998 when he bought the property. As a BFP did he acquire the property free and clear without notice of Dadson's unrecorded 1995 lease or did Meline buy the property subject to Dadson's 1995 lease? The resolution of this issue is determinative of Meline's right to cancel Dadson's leasehold estate pursuant to a recorded lease dated 1983 that Dadson had on the property.

FACTUAL AND PROCEDURAL SYNOPSIS

The disputed facts were resolved by court trial for three days following remand. The core dispute is what standard of review is to be utilized by this court in determining the proper disposition of the case. Meline maintains the proper standard of review is pursuant to the substantial evidence standard. Dadson contends, on the other hand, the

proper standard of review is "de novo." As hereafter set forth we hold that the proper standard of review is under the substantial evidence principle.

FACTS

The 1983 Lease Agreement.

Allan Gower ("Gower") owned an apartment building located at 1434 South Redondo Boulevard, Los Angeles, California. On about September 10, 1983, Gower leased a portion of the premises to Dadson known as the laundry room. The lease was memorialized in writing. Paragraph 1 of the lease indicated that Dadson had an initial term of one year. Paragraph 6 of the lease provided "This lease shall be automatically renewed for the same period of time described in paragraph 1 hereof unless cancelled in writing sent by registered or certified mail by either party 90 days prior to expiration." No evidence was introduced indicating that either party to the lease elected to terminate the lease prior to expiration of the initial one year term. As a result the 1983 lease was extended for a second one year term through and including September 10, 1985. Dadson had the sole lease on the laundry room.

The 1995 Lease Agreement.

Gower sold the apartment building to Brad and Lisa Reed ("Reed") in August of 1995. Reed in turn hired HLS Property Management and Sandra Lucas ("Lucas") to manage the property for them. Lucas presented to Reed the prospect of entering into a lease with Dadson. Reed signed a document granting Lucas the authority to manage the property on their behalf.

A lease agreement was signed by Dadson on December 8, 1995. Paragraph 3 of the lease provided that Lucas was signing the 1995 lease with "full authority in writing to enter into this lease on [the owner's] behalf."

The initial term of the 1995 lease was ten years. Paragraph J of the lease further provided that the lease would renew for two additional ten year terms unless Dadson provided written notice of its intention to cancel the lease at least 90 days prior to the expiration of the term then in effect. Paragraph J further provided that the lease would be

extended for an additional ten year term unless terminated by either of the parties to the lease by written notice at least 90 days prior to the expiration of the term then in effect.

Purchase of the building by Meline.

In 1998, Meline made an offer to purchase the property. Correspondence between the owners and Meline then followed. Meline's offer was eventually accepted. In the Spring of 1998, an escrow was opened. During escrow a title report was acquired from Chicago Title Company. After reading the title report closely, according to Meline, he noticed the following things: a lease for the laundry room had been conveyed by Gower, as lessor, to Dadson, as lessee, in 1983; the lease was recorded September 28, 1983; and a subordination was reflected in the report. Meline contacted the escrow officer and requested three documents as follows: the 1983 recorded lease for the laundry room, any deeds in the chain of title between Gower and the Reeds, and the agreement to subordinate. In response Meline obtained the following: copy of the recorded 1983 lease entitled "Standard Laundry Room Lease"; subordination agreement; and Grant Deed showing transfer from Gowers to Reeds. On reading the title report and copies of the documents provided for him Meline came to the conclusion that the lease executed in 1983 was in full force and effect.

Meline was an attorney experienced in real estate matters. The next step for Meline involved driving to the property and inspecting it. Upon arriving at the property Meline did the following: walked up the sidewalk on the side of building; looked through the laundry room window because he had no key; saw two old and kind of rusty machines; saw a rusty sign that said Dadson Washer Service and instructions on how to operate the machines; and did not request an estoppel certificate because after leaving the property he reread the lease with the Dadson Washer Service. Based on Meline's observation and experience he concluded that the 1983 lease was the operative lease that gave Datson occupancy and possession of the property; and Dadson being a commercial company would have recorded any new lease or change in status.

Meline talked to the seller only once before escrow closed and heard nothing about an unrecorded lease on the property. When Meline talked to the seller on this one

occasion, the discussion concerned the eviction of a tenant on the property. Meline maintains he never met the seller, Reed. Meline was never able to locate Gower. Escrow closed on December 21, 1998. Meline paid $303,000 for the property.

In 2004, Meline's tenants started to complain about the conditions in the laundry room, which included the following: poor service, old machines, room was dirty and not maintained, and the existence of an unplugged hole in the wall where hoses should have been, allowing rodents to enter the room. Meline telephoned Dadson and spoke to one Stephanie Gonzales. Meline first learned in this phone call that Dadson considered a later lease from Sandra Lucas to be the operative lease.

In 1999, Meline telephoned Dadson to request execution of another subordination agreement to enable Meline to obtain permanent financing from Wells Fargo Bank. The requested subordination agreement was executed without informing Meline that Dadson considered the 1983 lease not operative, nor was there an indication another lease had been given to Dadson.

In accordance with paragraph 6 of the 1983 lease, Meline served notice of cancellation of the lease, but Datson did not vacate.

PROCEDURE

Meline filed his complaint for declaratory relief on October 6, 2005, asking for a determination that the 1983 recorded lease by Gower was controlling until cancelled by Meline on September 10, 2005, and that Dadson had no right, title or possessory interest in the laundry room premises.

Judge Gregory W. Alarcon heard and granted Meline's summary judgment motion and entered judgment in favor of Meline against Dadson accordingly. Dadson filed a timely notice of appeal contending, among other things, that triable issues of material fact existed which should have precluded the granting of Meline's motion.

On appeal, this court reversed for the reasons set forth in Meline 1, which this court judicially notices in accordance with section 451, subdivision (a) of the Evidence Code.

On remand, and the filing of a peremptory challenge against Judge Alarcon, under Code of Civil Procedure section 170.6 the matter was transferred to Judge Soussan G. Bruguera for trial. Following trial of the facts, Judge Bruguera granted judgment in favor of Meline, finding the property was purchased by Meline as a bona fide purchaser subject to the 1983 lease, in good faith and for valuable consideration and that Dadson's right to possession ceased on September 10, 2005.

Dadson filed a timely notice of appeal on August 18, 2008.

DISCUSSION

Standard of review

We conclude the standard of review is pursuant to the substantial evidence principle as advocated by Meline. We determine that the de novo standard advocated by Dadson lacks merit. In utilizing the substantial evidence standard, which is well ingrained in the law, we deem it prudent to restate some well defined principles concerning factual determinations. Initially, substantial evidence is not composed of just any evidence. It must be of reasonable and of ponderable significance. The evidence must be such as relied on by reasonable minds. This concept is well stated in *Kuhn v. Dept. of General Services* (1994) 22 Cal.App.4th 1627, 1633 and *Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651-652. It bears repeating that our jurisdiction is limited. If substantial evidence supports the decision of the trial court, the appellate court is bound to affirm under the concept of deference. In other words we defer to the decision of the trial court. That is not to say that any member of the appellate panel might have reached a contrary conclusion in a given instance if sitting as the trial judge. But under the rule of deference we are not at liberty to do so. With these elementary principles restated, we now proceed to address Dadson's contentions on appeal which he contends constitutes reversible error.

Dadson's contentions

In his briefing on appeal Dadson argues that the de novo standard applies because the facts are undisputed. We note that in the Appellant's Opening Brief Datson states

". . . the underlying facts in this declaratory relief action were undisputed. . . ." Dadson reasons that because the facts are undisputed, both the trial court and this court should render a judgment and affirmance, respectively, based on undisputed facts in accordance with the law as Dadson sees it utilizing the de novo standard of review. We find the contention to be disingenuous for several reasons the most prominent of which is the fact that in reversing in Meline 1 we found that triable issues of material fact existed thereby precluding peremptory disposition of the case by granting of a motion for summary judgment followed by a judgment thereon in favor of Meline. Quoting from our unpublished opinion in Meline 1, we stated: "In searching the record on appeal, we find there are triable issues of material fact on whether Meline had sufficient information before him that might reasonably give rise to a duty to make pre-purchase inquiry of Dadson about any interest of the lessee in the property, which might have resulted in Dadson informing Meline of the unrecorded 1995 lease."

We opine that the trial judge correctly understood and applied our reasoning in Meline 1, above quoted, by conducting a bench trial on remand for three days and eventually coming to a decision in favor of Meline after a trial of the disputed facts. Nevertheless, we answer each of Dadson's contentions as we understand them.

A. The trial court erred in finding that the 1983 lease was valid and controlling as to Meline until cancelled by him in 2005.

The gravamen of Dadson's contention centers on the 1983 lease and its fate following the events contained in the record. In capsule format, Dadson maintains that the court committed reversible error when it recognized viability in the 1983 lease after 1985. Dadson maintains that no rights could flow from the 1983 lease in that the 1983 lease automatically expired by its express terms in 1985 when a tenancy for years resulted. Citing *Camp v. Matich* (1948) 87 Cal.App.2d 660, 665 as authority, Dadson maintains that no notice of termination was required. Dadson further reasons that unless a new estate for years is created, possession by the tenant is merely a tenancy at

sufferance, unless the tenant pays rent and the rent is accepted by the landlord. In the latter case, according to Dadson, a month to month tenancy is created. Dadson relies on *Rossetto v. Barross* (2001) 90 Cal.App.4th Supp. 1, 6 for this proposition. Dadson brings this court's attention to paragraph 2 of the 1983 lease which provides for the payment of rent on a monthly basis. Datson contends this provision is consonant with Civil Code sections 1943 and 1945. Civil Code section 1943 provides in relevant part:" A hiring of real property, other than lodgings and dwelling-houses, in places where there is no custom or usage on the subject, is presumed to be a month to month tenancy unless otherwise designated in writing; . . ." Civil Code section 1945 provides: "If a lessee of real property remains in possession thereof after the expiration of the hiring, and the lessor accepts rent from him, the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding one month when the rent is payable monthly, nor in any case one year." Dadson then concludes that in December of 1995, the month to month tenancy was superseded by the new written lease agreement and from that point forward Dadson's leasehold interest was defined by the terms of the 1995 lease which gives Meline no right to cancel Dadson's leasehold interest without cause in 2005.

Meline counters Dadson's argument by commenting that Datson is using diversionary tactics in stating that "the underlying facts in this declaratory relief action were undisputed." Datson is merely attempting to misdirect the standard of review from the view of Meline that the substantial evidence rule should apply as opposed to the de novo review advocated by Dadson.

Meline maintains that it is immaterial to the judgment how the court interpreted the written 1983 lease. Reasoning further, Meline contends that Dadson is essentially complaining of only one error committed by the trial court, namely, the court's legal interpretation of the 1983 lease based on purported undisputed facts. Meline contends that Dadson is arguing the trial court's error resulted in finding Meline purchased the apartment house subject to the 1983 lease where a proper interpretation would have determined the lease had "expired" in 1985 by its express terms, meaning it "extinguished," under Civil Code section 1682 which states: "A contract may be

extinguished in like manner with any other obligation, and also in the manner prescribed by this Title." Meline accuses Dadson of charging the trial court with reversible error in finding the evidence of the circumstances surrounding Meline's pre-purchase inquiry of the recorded documents and the laundry room to be sufficient to justify Meline ending further inquiry. Meline contends that Dadson is thus implying the trial court erred in not finding Meline negligent for not having inquired of Dadson directly.

Meline argues that assuming arguendo the lease term had "expired" in 1985, as long as Dadson remained in possession with apparent consent and paid rent the lease did not "extinguish" as a matter of law, but automatically renewed and continued on the same terms under Civil Code section 1945 until notice of termination was served in accordance with Civil Code section 1946 which states in relevant part: "A hiring of real property, for a term not specified by the parties, is deemed to be renewed as stated in Section 1945, at the end of the term implied by law unless one of the parties gives written notice to the other of his intention to terminate the same, at least as long before the expiration thereof as the term of the hiring itself, not exceeding 30 days; provided, however, that as to tenancies from month to month either of the parties may terminate the same by giving at least 30 days' written notice thereof at any time and the rent shall be due and payable to and including the date of termination. It shall be competent for the parties to provide by an agreement at the time such tenancy is created that a notice of the intention to terminate the same may be given at any time not less than seven days before the expiration of the term thereof. The notice herein required shall be given in the manner prescribed in Section 1162 of the Code of Civil Procedure or by sending a copy by certified or registered mail addressed to the agent of the lessor to whom the lessee has paid the rent for the month prior to the date of such notice or by delivering a copy to the agent personally." Dadson does not dispute the fact that the 1995 lease was never recorded nor explain why the 1995 lease was kept a secret instead of simply recording it for the nominal fee of about $15. Therefore, the only issue for review is whether there was substantial evidence to support the trial court's finding that the circumstances surrounding Meline's pre-purchase inquiry of the recorded documents and observing

Dadson in possession of the laundry room was sufficient to warrant his belief that the 1983 lease had automatically renewed and continued in force and effect ending any obligation on Meline's part to make further inquiry to search for any unrecorded secret leases.

We agree with Meline's counter argument to Dadson's contention under this subheading. We now proceed to determine if substantial evidence in the record supports the judgment of the trial court rendered after a three day bench trial.

B. Meline acquired the apartment building subject to the 1995 lease; the trial court's finding that Meline was a bona fide purchaser without notice was not supported by the evidence and was in error as a matter of law.

As indicated previously, we do not find the court committed errors of law in proceeding to adjudicate this case on the basis of the substantial evidence principle. In proceeding under this principle we determine that the following evidence in the record supports the ruling of the trial court. Meline began his pre-purchase inquiry by reviewing the recorded 1983 lease, the subordination agreement signed by Gower and Dadson subordinating recording priority of the 1983 lease, and the grant deed evidencing direct transfer of title from Gower to his sellers, the Reeds. Meline became convinced that the 1983 lease was still in effect when he found Dadson had remained in possession of the same area and using it for the same enterprise described in the 1983 lease. The subordination agreement was an important factor in forming his conviction because he believed Dadson would not have agreed to subordinate a lease they claimed was no longer in effect. Meline having found no later recorded lease was not alerted to the possible existence of any other lease, believing Dadson, a commercial enterprise, would have naturally recorded any newer lease that came into existence as a matter of course. We hold that these facts alone were sufficient to support the trial court's determination that these circumstances were sufficient to have ended further pre-purchase inquiry by Meline and would support a judgment in his favor.

C. The determination whether a buyer is a "bona fide purchaser" is based on an objective standard; Meline's "state of mind" was entirely irrelevant.

We agree that Meline must be adjudged on the basis of an objective standard, but that being said there is substantial evidence in the record to support the ruling of the trial court even without considering Meline's state of mind. That evidence is set forth *supra* and even if purged of any reference to Meline's state of mind, the judgment should be affirmed.

DISPOSITION

The judgment is affirmed. Respondent to recover costs of appeal.

WOODS, Acting P. J.

We concur:

ZELON, J.

JACKSON, J.